

	Link to Final Agency Decision
	OAH 2-1800-19430-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Order of Revocation of the License to Provide Family Child Care of Joyce Arends	AMENDED FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
--	---

The above-captioned matter came on for hearing before Administrative Law Judge Raymond R. Krause (ALJ) on March 7, 2008, at the Wright County Human Services Office in Buffalo, Minnesota. The OAH record in this matter closed the same day. A Report and Recommendation was filed by the ALJ with the Commissioner of Human Services on March 14, 2008.

On April 7, 2008, Respondent filed exceptions to the Report of the ALJ with the Department of Human Services. Respondent requested that the Commissioner of Human Services (the Commissioner) consider certain facts that were not offered as evidence during the hearing. By letter dated May 7, 2008, the Commissioner requested the ALJ hold an additional hearing to consider these facts and to make any additional Findings of Fact and Conclusions of Law as appropriate.

An additional hearing was held on June 27, 2008 at the Wright County Human Services Office in Buffalo, Minnesota.

Anne L. Mohaupt, Assistant Wright County Attorney appeared on behalf of Wright County (the County) and the Department of Human Services (the Department). Jeffery Jensen, Attorney at Law, appeared on behalf of Respondent, Joyce Arends. In addition, Joe Breyen, Jeffrey Swenson, and Elizabeth Nourse appeared as witnesses.

The Respondent offered six exhibits, all of which were accepted into evidence without objection.

STATEMENT OF THE ISSUE

Should the Order of Revocation, pursuant to Minn. R. 9502.0335, dated December 13, 2007, be affirmed?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Findings of Fact 1-14 of the report filed by the ALJ on March 14, 2008 are incorporated in these Findings of Fact.

2. Respondent's son, Trevor, now resides in McGrath, Minnesota. Respondent resides and operates her daycare from Otsego, Minnesota.¹

3. The State of Minnesota, the Department of Human Services, and the County of Anoka recognize Trevor's address as McGrath, Minnesota.²

4. Daycare clients of Respondent's program have not seen Respondent's son at the daycare site and believe he is residing elsewhere.³

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Human Services and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subd. 2a and 14.50 (2006).

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department and Wright County have complied with all applicable procedural requirements of rule and law.

4. Minn. Stat. § 245A.07 and Minn. R. 9502.0335 authorize the Commissioner to revoke a license where a disqualified person lives in the daycare residence or is present during daycare hours.

5. Under Minn. Stat. § 245A.07, subd. 3, if the Department demonstrates that a reasonable cause exists to take action, the burden of proof shifts, in a hearing on a license revocation, to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with the laws and rules allegedly violated.

6. Minn. R. 9502.0335, subp. 6 provides as follows:

Subp. 6. An applicant or provider shall not be issued a license or the license shall be revoked, not renewed, or suspended if the applicant, provider, or any other person living in the day care residence or present during the hours children are in care, or working with children:

¹ Testimony of Joyce Arends.

² Exs. A-F.

³ Testimony of Joe Breyen, Jeffrey Swenson, and Elizabeth Nourse.

D. Has a disqualification under Minn. Stat. § 245C.15, that is not set aside under Minn. Stat. § 245C.22, or for which a variance has not been granted under Minn. Stat. § 245C.30.

7. The Department has not demonstrated reasonable cause to believe that the license holder may have a disqualified individual living in the daycare residence or present during daycare hours.

8. The Respondent has shown by a preponderance of the evidence that her son is not living in the daycare residence or present during daycare hours.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that: the Commissioner of Human Services **rescind** the Order of Revocation of the license of Joyce Arends to provide family child care.

Dated: July 2, 2008

s/Raymond R. Krause

RAYMOND R. KRAUSE

Administrative Law Judge

Reported: Recorded
 No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of the Commissioner to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Respondent operates a daycare program in her residence. Her son, who is 20, was convicted of Criminal Sexual Conduct in the Second Degree. Prior to his conviction, he was living at home with his parents at the residence in which the daycare operates.

Following his arrest, the Department conducted a background check and determined that he should be considered a “disqualified person” for purposes of the daycare laws and regulations. The son did not contest this disqualification.

At the hearing, statements were made, some under oath by Respondent and some simply as part of her counsel’s closing argument that the son is living “up north.” No evidence of where “up north” is was offered or even discussed. No evidence of how long he may have been “up north” was offered. The only evidence available indicated that, as of his arrest, his residence was with his family at the licensed facility. Based on the facts presented at the initial hearing, Respondent did not meet its burden of proof.

Respondent, however, brought additional facts to the attention of the Commissioner during the period for filing exceptions. In light of these offers of proof, the Commissioner requested an additional hearing at which Respondent could introduce this evidence and at which the County, on behalf of the Department, could examine the new evidence.

At the additional hearing, Respondent offered more specific testimony as to the place of residence of her son. Respondent also introduced evidence of a driver’s license, county documents and Department documents that indicate the son’s address is in McGrath, Minnesota, rather than in Otsego at the daycare program location. In addition, several daycare clients who drop off and pick up their children at Respondent’s program testified that they have not seen the son at the program residence since his arrest.

The County does not dispute the testimony or the documentary evidence. The County offered no evidence that the son is residing at his parent’s home or has been

there during daycare hours since his arrest. Since the Respondent has now offered substantial evidence that her son is not living at the residence in which the daycare program operates, she has met her burden of proof. The County does not dispute this evidence and therefore, it is the recommendation of the ALJ that the Order of Revocation be rescinded.

R. R. K.